

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF SILVER RUN ELECTRIC, LLC, FOR)
A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO BEGIN THE BUSINESS) PSC DOCKET NO. 18-0945
OF AN ELECTRIC TRANSMISSION UTILITY)
AUTHORIZED TO PROVIDE TRANSMISSION)
FACILITIES IN DELAWARE)
(FILED JULY 3, 2018))

[PROPOSED] ORDER NO. XXXX GRANTING MOTION TO MODIFY
CONDITIONAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

AND NOW, this 5th day of March, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on July 3, 2018, Silver Run Electric, LLC ("Silver Run" or the "Company"), filed an application ("Application") with the Commission pursuant to 26 Del. C. § 203E(b) seeking a Certificate of Public Convenience and Necessity ("CPCN") to begin the business of an electric transmission utility authorized to provide electric transmission facilities in Delaware; and

WHEREAS, Silver Run's Application relates to its proposed construction and operation of the scope of the Artificial Island solution (the "Project") designated to Silver Run by PJM Interconnection, L.L.C. ("PJM"), the regional electric grid operator serving Delaware and all or parts of 13 other states and the District of Columbia. In particular, the Project consists of transmission system improvements and reliability

upgrades PJM has determined are necessary to assure the reliability and stability of the regional electrical grid. The solution selected by PJM includes Silver Run's construction of the new 230kV Silver Run substation east of Odessa, Delaware, and a new 230kV transmission line crossing the Delaware River that will connect the Silver Run substation with the electrical system in the Artificial Island, New Jersey area.

WHEREAS, Public Service Commission Staff ("Staff") and the Delaware Division of the Public Advocate ("DPA"), which intervened as a matter of statutory right, are the only parties to the proceedings in this matter, the Commission having not received to date any petitions to intervene, material objections, or written submissions raising significant issues with respect to the Application from any other persons or entities; and

WHEREAS, applications for an electric transmission utility CPCN are governed by 26 *Del. C.* §203E enacted in early 2018 by the 149th General Assembly of the State of Delaware and signed into law by Governor Carney on February 14th, 2018;¹ and

WHEREAS, in determining whether to grant the CPCN, §203E(b) directs the Commission to consider:

(1) Whether PJM Interconnection, L.L.C. (or its successor) ("PJM") has selected the applicant to

¹81 Del. Laws c. 205.

develop or own transmission facilities included in the regional transmission expansion plan approved through PJM's Federal Energy Regulatory Commission-approved developer qualification and competitive procurement process, or if such PJM approval has not occurred:

a. The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company;

b. The need for and impact of any transmission facilities proposed by the applicant on the safe, adequate, and reliable operation or delivery of electric supply services;

c. The engineering and technical design of any transmission facilities proposed by the applicant;

(2) The impact of granting the certificate of public convenience and necessity application on the State's economy and the benefits to the State's ratepayers; and

(3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.²

WHEREAS, on December 20, 2018, the Commission, pursuant to 26 Del. C. §203E, issued Order No. 9316 ("Order No. 9316") granting Silver Run's Application for a CPCN to begin the business of an electric transmission utility authorized to provide electric transmission facilities subject to the express conditions and limitations that the authority granted by the CPCN shall not take effect until issuance by the Federal Energy Regulatory Commission ("FERC") of an order on cost allocation accepting and approving either the Stability Interface Method

² 26 Del. C. § 203E(b) (1)-(3).

("SIM") or the Stability Deviation Method ("SDM") as the just and reasonable *ex ante* cost allocation for the Project; and

WHEREAS, Order No. 9316 further provides that if FERC has not issued its order selecting either the SIM or SDM as the cost allocation for the Project by February 28, 2019, that shall be deemed "material noncompliance" with the conditions of the CPCN under Section 203E(e)(1), and Silver Run's CPCN shall be deemed suspended as of that date. This suspension shall not preclude Silver Run from filing subsequent requests for the Commissioner's review and consideration in this docket; and

WHEREAS, as of the date of this Order, FERC has not issued an order selecting the cost allocation for the Project; and

WHEREAS, as set forth in Order No. 9316, while proceedings at FERC have been pending, Silver Run has taken steps necessary to develop the Project according to PJM's timeline; and

WHEREAS, as set forth in Order No. 9316, under the permits and approvals received by Silver Run, construction activities are restricted to certain times of the year, and its contractors face additional restrictions because of the nature of the work and materials and equipment used; and

WHEREAS, Silver Run states that its and its contractors' ability meet the Project's current budget and required in-service date are at significant risk if certain critical path construction activities are not undertaken imminently; and

WHEREAS, Silver Run recognizes the continued quandary in which the Commission finds itself given that FERC has not issued its order selecting the cost allocation methodology for the Project; and

WHEREAS, Silver Run submitted a Motion to Modify the Conditional CPCN and a Supplement to the motion on February 25, 2019, in which it seeks the Commission's approval of a modification to Order No. 9316 extending the timing for FERC's cost allocation order to April 30, 2019 and allowing Silver Run to undertake certain critical construction activities under a limited time frame, in order to meet critical construction and Project deadlines. Under the Motion to Modify, if FERC does not issue an order by April 30, 2019 approving the SIM or SDM methodologies, the modified conditional CPCN approval will be automatically suspended and the Commission will have authority to take such further action with respect to Silver Run's CPCN approval as the Commission may deem appropriate at the time; and

WHEREAS, the Commission reviewed the Motion and supplemental materials submitted by Silver Run and considered the evidence and arguments presented at the Commission's duly noticed March 5, 2019 public meeting; and

WHEREAS, the Commission has discretionary authority under 26 Del. Admin. C. §3011.2.2.27 ("Regulation 3011") to "approve, conditionally approve, modify or deny" an electric transmission

CPCN application where it finds doing so is in the public interest; and

WHEREAS, based on the record and evidence presented in this matter, the Commission hereby finds and determines as follows:

1. As reflected in Order No. 9316, Silver Run has already established the significant need for the Project and its qualification to develop and own the Project as public utility consistent with Delaware law.

3. Granting the Motion to Modify the conditional certificate of public convenience and necessity previously approved by the Commission in Order No. 9316 prevents additional Project cost increases and potential construction delays detrimental to the State's economy and ratepayers.

4. The Project will produce direct economic benefits for Delaware and its ratepayers and, therefore, it is important that the Project be placed in service by the date required by PJM. As noted in Order No. 9316, a 2015 market efficiency study performed by PJM at the Commission's request estimated that total load payments would decrease by \$17.04 million annually within the Delmarva Power Transmission Zone of PJM (the

"Delmarva Zone"), and by \$169 million annually PJM-wide, as a result of the Project.³

5. Further economic benefits that will result from Project include annual tax revenue to New Castle County and local school districts, wage and related payments associated with the approximately 30 local jobs supported during construction of Silver Run's transmission facilities, payment to the Delaware Agricultural Lands Preservation Foundation related to the purchase of a utility easement, payment to the State of Delaware for the purchase of a utility easement, an annual payment for utility use of State-owned subaqueous lands, and the acquisition of a 210 acre land parcel to be donated to the Delaware Department of Natural Resources and Environmental Control for public use and access.

6. The transmission facilities to be constructed by Silver Run are subject a binding cost cap commitment as described in its Designated Entity Agreement. Pursuant to the Designated Entity Agreement, Silver Run bears the risk of a wide range of cost overruns in excess of this amount. Silver Run's current construction budget, however, is less than its construction cap, and therefore ratepayers will benefit from any savings below the cost cap amount. SRE's estimated budget and

³ Based on its load share with in the Delmarva Zone, annual load payment savings to Delaware would be approximately \$10 million.

construction timeline for the Project are subject to a high degree of confidence as a result of Silver Run's advanced development, engineering, procurement, construction contracting progress, and cost cap commitments.

7. Granting the Motion to Modify the certificate of public convenience and necessity will also preserve the Project's significant health, safety, and welfare benefits to the general public. The Project resolves significant reliability and stability issues and reduces complexities associated with the Artificial Island Operating Guide. A more reliable and resilient electric grid protects the public from system outages and negative economic impacts caused by blackouts. In addition, the Project provides a separate transmission connection into Delaware. Delaware and the Delmarva Peninsula are part of an energy-constrained area regionally, and this redundant transmission connection into the State reduces grid congestion and supports critical grid services such as black start capability and system restoration.

8. PJM has established that a stability issue exists on the regional electrical system which creates reliability risks. PJM has evaluated the merits of a "do nothing" approach and concluded that there are significant risks with not proceeding with a transmission solution. The most significant risks of a do nothing approach identified by PJM include cascading and

widespread system outages (blackouts) and a potential emergency shutdown of a nuclear unit (i.e., scrambling a unit off-line).⁴

9. The allocation of Project costs is the subject of proceedings pending before the Federal Energy Regulatory Commission ("FERC") in Docket EL15-95. The Commission, along with the DPA, Silver Run's parent company (LS Power), and other parties initiated the FERC docket to challenge the PJM Transmission Owner's existing solution based DFAX ("SBDFAX") cost allocation methodology, which would have allocated more than 90% of the Project's overall costs to the Delmarva Zone.⁵ Silver Run estimated in its CPCN Application that, under the SBDFAX allocation methodology, the average Delaware residential ratepayer would pay \$1.32 per month in transmission charges associated with Silver Run's remaining unspent portion of the Project solution.

10. On July 12, 2018, FERC issued a unanimous order⁶ (the "Rehearing Order") finding that application of the SBDFAX methodology to the Project would be unjust and unreasonable and would not allocate costs in a manner that is at least "roughly

⁴ PJM. (2017). *Transmission Expansion Advisory Committee (TEAC) Artificial Island Recommendations to the PJM Board* at p. 22, submitted as Attachment D to Exhibit A of Silver Run's CPCN Application.

⁵ Delaware-based electric load represents approximately 60% of the Delmarva Power Transmission Zone of PJM and, therefore, Delaware ratepayers pay approximately 60% of transmission project costs allocated to the Delmarva Power Transmission Zone.

⁶ One FERC Commissioner did not participate in the decision.

commensurate" with beneficiaries.⁷ To establish the just and reasonable *ex ante* cost allocation for the Project, the Rehearing Order established a paper hearing proceeding to develop additional information, and requested the parties to submit comments on three discrete cost allocation methodologies: (a) the Stability Interface DFAX Method and (b) Stability Deviation Method, both of which were developed by PJM, and (c) a hybrid methodology proposed by Exelon (the "Exelon Hybrid Method"). FERC's stated purpose in establishing the paper hearing procedure was "to further understand and decide among the methods" referenced in the Rehearing Order.⁸

11. FERC has not yet issued an order in Docket EL15-95 establishing the just and reasonable *ex ante* cost allocation methodology from among the three alternative methods under review. Because proceedings to establish the cost allocation for the Project are still pending before FERC, the Commission believes it is appropriate and in the public interest to withhold full, unconditional CPCN approval until FERC has issued an order in Docket EL15-95 confirming the cost allocation methodology that will be applied to the Project. At the same time, the Commission recognizes that Delaware ratepayers benefit from any savings below Silver Run's construction cost cap, and

⁷ *Delaware Public Service Commission, et. al., v. PJM Interconnection, L.L.C., et. al*, 164 FERC ¶61,035 (2018).

⁸ *Id.* at p. 42.

that maintaining Silver Run's existing construction schedule is necessary to meet PJM's required June 1, 2020, in-service date for this critical grid reliability solution.

12. For these reasons the Commission has determined that it is in the public interest to grant Silver Run's Motion to Modify the conditional CPCN authority granted by the Commission in Order No. 9316, for a limited period of time, to begin construction in Delaware of certain critical path elements necessary to maintain the Project schedule and minimize additional cost increases to ratepayers pending FERC's selection of the cost allocation methodology applicable to the Project. If FERC does not issue an order in Docket EL15-95 confirming the selection of the SIM or SDM cost allocation methodologies referenced in the Rehearing Order by the deadline established in this Order below, the Project's modified conditional CPCN will be automatically suspended and the Commission may deny, withhold, or further limit additional CPCN authority as necessary in the public interest.

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 Del. C. §203E, Silver Run's Motion to Modify its conditional CPCN is granted. The CPCN authority granted to Silver Run in Order No. 9316 is hereby modified as follows:

a. Conditional CPCN authority is granted from the date of this Order through and including April 30, 2019, and shall terminate at the end of such term unless (i) FERC has issued an order confirming the selection of the SIM or SDM cost allocation methodologies referenced in the Rehearing Order or (ii) this Order is otherwise extended by subsequent order of the Commission. Should FERC issue such an order on or before April 30, 2019, the date of unconditional CPCN approval shall be the date of the FERC order, without need for a further Commission order.

b. If FERC has not issued its order selecting either the SIM or the SDM as the cost allocation for the Project by April 30, 2019 (or issues an order that selects a different cost allocation methodology), that shall be deemed "material noncompliance" with the conditions of the CPCN under Section 203E(e)(1), and Silver Run's CPCN shall be deemed suspended as of April 30, 2019 (or, if earlier, the date of the nonconforming FERC order). This suspension shall not preclude Silver Run from filing subsequent requests for the Commission's review and consideration in this docket.

c. The construction activity authorized by this Order shall be limited to the critical path activity and scopes as detailed in Silver Run's February 25th, 2019 supplement.

d. Issuance of this CPCN is without prejudice to Delaware and shall not act as a waiver of any rights or arguments that the State of Delaware, the Commission, or the DPA may have or assert in any other proceedings.

2. All other terms and conditions of Order No. 9136 not inconsistent with the foregoing remain in effect as previously ordered.

3. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary